omission is not a ground on which an application to call them as witnesses can be successfully based. On Mr. Sault's preliminary objection therefore I decide in his favour and rule, that for the present at all events, oral evidence in support of the respondent cannot be given.

The position therefore is now unusual and complicated and I will hear argument by Counsel on the appropriate action to be adopted.

Ruling accordingly.

ABU BAKAR BIN HAJI ABDUL RAHMAN v. THE COLLECTOR OF LAND REVENUE, MALACCA.

[Orig. Civ. Juris. (Pretheroe, J.) May 9, 1950]

[Malacca — Reference No. 1 of 1949]

Land Acquisition Ordinance (Cap. 128) — Acquisition of land — Assessment of compensation — Reference to High Court — Costs.

In this case certain lands in Malacca were required for a public purpose and the Collector of Land Revenue assessed the compensation to be allowed as $1,027.81. The owner of the property declined to accept this amount as compensation on the ground that it was totally inadequate and required the Collector of Land Revenue to refer the matter for the determination of the High Court under section 18 of the Land Acquisition Ordinance.

Held, (1) that the valuation in respect of the lands including the demolition value of the bungalow on the land should be $4,158.00; (2) that as the claim was for $8,000.00 the Court was precluded by the provisions of paragraph (a) of sub-section (1) of section 33 of the Land Acquisition Ordinance from awarding costs to the applicant.

Case referred to:—

(1) *Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v. Revenue Divisional Officer, Vizagapatam* (1939) 2 All E.R. 317.

REFERENCE to High Court under section 18 of the Land Acquisition Ordinance (Cap. 128).

W. H. Sault for the applicant.

H. Shepherd for the respondent.

Pretheroe, J. : — By Notification No. 103 published in the *Gazette* of the 23rd June, 1949, the Resident Commissioner of the Settlement of Malacca intimated that the plots numbered 1012 and 1015 respectively in the Mukim of Alai in the said Settlement were needed for a public purpose. Plot No. 1015 is regular in shape and has a frontage on the east side of the main Malacca — Singapore Road of approximately eighty yards and is situate near the 4¼ milestone from Malacca. The second, and smaller, plot adjoins the larger plot but is some distance back from the above-mentioned road. A bungalow of substantial proportions stands on the larger plot facing the road. The rest of that plot is covered by a grove of coconut palms and there are twenty-four fruit trees on the smaller plot.

The procedure prescribed by the Land Acquisition Ordinance was duly followed and, under section 10(1)(c) of the Ordinance, the Collector of Land Revenue assessed the compensation to be allowed as follows:—

For lot 1012	$132.81
For lot 1015	$595.00
For the building on lot 1015 ...	$300.00
Total ...	$1,027.81

The owner of the properties declined to accept this amount as compensation on the ground that "the amount of compensation is wholly inadequate" and "required" the Collector of Land Revenue to refer the matter for the determination of this Court under section 18 of the Ordinance. The reference was duly made and came before the Court on the 13th January last. On the evening of that day, accompanied by Mr. Sault, Counsel for the applicant, and Mr. Shepherd, Federal Counsel, I viewed the properties. The hearing of the evidence was concluded on the 6th March last.

At the hearing a substantial amount of evidence was led which had not been made available to the Collector. Doubtless he was entirely unaware of certain factors which have an important bearing on the assessment of the compensation properly due to the applicant.

Paragraph (a) of sub-section (1) of section 25 of the Ordinance provides that the amount of compensation to be awarded shall be the market value of properties at the date of the publication in the *Gazette* of the notification of the intention to acquire the said properties. In this case the date of publication of that notice (hereinafter referred to as the "material date") was the 23rd June, 1949. But there was complete conflict of opinion as to the method to be adopted to ascertain the "market value".

Sub-section (1) of section 25 of the Land Acquisition Ordinance is the same as sub-section (1) of section 23 of the Indian Land Acquisition Act, 1894, except that the latter contains an additional paragraph relating to standing crops and trees, and that sub-section of the Indian Act was considered by the Privy Council in *Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v. Revenue Divisional Officer, Vizagapatam*[1]. In this judgment I have endeavoured to follow the principles established by that case.

I will, in the first place, consider the market value of the land comprised in the two plots and will then consider separately the market value of the bungalow. Mr. Sault contended that plot No. 1015, or at any rate the front portion of that plot, should be valued as building land while Mr. Shepherd supported the Collector's view that it is agricultural land and should be valued as such. At present there are, and on the material date there were, a few shop houses having attap roofs and also a Police Station quite close to the plots in question. Otherwise the area is sparsely dotted with Malay type houses and is a rural area similar to many other parts of the Settlement. Mr. Sault submitted that plot No. 1015 was suitable for building purposes and was situate only slightly more than four miles from the centre of Malacca Town. It faces the main Singapore road and is less than one hundred yards from the junction of that road with the Malacca — Jasin road. As regular omnibus services use both these roads Mr. Sault submitted that access to the area was already available. Presumably it was for these reasons that Mr. Peralta, a licensed auctioneer and appraiser who gave evidence for the applicant, sub-divided this plot into strips running parallel to the road and then computed the value of those strips as building sites. By this method Mr. Peralta computed the market value of plot No. 1015 as being $3,000. But by adopting this method of calculation he was clearly in error for he valued the land as if it had already been built upon (without allowing any value for such buildings themselves). As clearly stated in *Sri Raja's case* (cited *supra*) the land must not be valued as though it had already been built upon: what has to be valued is the possibility that the land might in the future be used for building purposes. The Collector was of opinion that any such possibility is a distant one and the applicant himself admitted that during the past twenty-three years only the Police Station and a few Malay houses have been erected in the area. No evidence was led to show any present expansion of Malacca in that direction or that there is any special reason that this particular plot should be selected if a few more buildings should be erected in the area. For these reasons I consider the possibility that plot No. 1015 will be converted into a building site is remote and consequently of little value. In fact I value this possible or potential use of the land at such a low figure that it is in the applicant's favour that I base my assessment on its present use as a coconut grove.

For the purpose of ascertaining the value of a coconut grove the best evidence would have been the selling price of other coconut groves in the same locality.- No such evidence was led for the reason, I understand, that there have in fact been no such sales in even comparatively recent times in the locality. I must resort to another method therefore and that commonly adopted in such circumstances, and which was supported by Mr. Sault, is to ascertain the net annual income derived from the land and then to compute its value by allowing a certain number of years purchase of such income. It was not disputed that at the material date applicant was deriving an average net income of $24/- *per mensem* from the sale of coconuts from this grove. He admitted however that the hundred and ten mature trees in the grove are more than thirty years old: that the thirty-two immature trees have not yet started to bear fruit and that the average age of the latter is between twelve and fifteen years. From the appearance of the mature trees it is apparent that they are approaching the end of their productive lives. The position therefore is that hundred and ten trees will gradually cease to produce any nuts of commercial quality while thirty-two more will gradually come into full production. It is clear therefore that during the next few years, in the absence of this acquisition, the applicant's net income would have declined until it finally stabilised (subject to price fluctuations of the market) with thirty-two trees in production. I compute therefore that his average net annual income during the ten years immediately following the material date would have been $150 at current price levels. I will now explain why I have adopted the period of ten years.

Applicant's average net income was based on the present prices of the products of the coconut palm. These prices are at an abnormally high level due to the present world shortage of vegetable oils. Applicant might normally have expected therefore a decline in income due firstly to declining production and secondly from falling prices though the latter influence might not have been effective for a few years. For these reasons I am satisfied that it will be fair and reasonable to allow ten years purchase of his income without making any allowance for a probable decline in market prices. Thus I arrive at $1,500 as being the market value of plot No. 1015.

On plot 1012 there are fourteen mangosteen trees, three mango trees, two rambai trees and five bachang trees. Applicant testified that he "leased" these trees out for the period of each fruit season and, on the average, received $50 a season as "rent". In fact he sold the crop on the trees each year for $50. This appears to be an exceptionally large income to be

derived from so few trees and applicant's own witness, Mr. Peralta, valued the plot, including the trees thereon, at $200. As the applicant can have no certainty that he will always find a purchaser for his crop I consider that Mr. Peralta's valuation of the market value of the plot is reasonable and should be accepted. I therefore award $200 in respect of plot No. 1012.

Before proceeding to the valuation of the bungalow I wish to add a few comments regarding the valuation of the land made by the Collector as his figures differ materially from those as computed in this judgment. The method adopted by the Collector was to consult his registers and there he found that there had been sales of four plots in the same area during the year 1949. One of those plots faced the Singapore main road and was about five hundred yards from plot No. 1015. The Collector was aware that the sale of the former plot had been a family transaction and, in his opinion, the price paid was unduly high and did not represent the price which would have been paid by a willing purchaser to a willing seller. Nevertheless he computed the average sale price per acre of the four plots as being $180. He then valued plot No. 1012 at the rate of $250 per acre and plot No. 1015 at $350 per acre. He agreed that these figures were more or less arbitrary and also he agreed that he did not inspect the four plots from which he had computed the average sale price per acre. This failure to inspect was an error in procedure. Having obtained the price per acre at which the four plots were sold he should have inspected them in order to ascertain the use to which they were being put and also the uses to which they are reasonably capable of being put in the future. If the value of the possibility in respect of different use in the future increased the value of the plots this increased value should have been considered. (*Sri Raja's* case quoted *supra*). Having arrived at a valuation of the four plots by this method he would have been in a position to compute the value of plots numbered 1015 and 1012 respectively on the same basis.

I will now proceed to consider the market value of the bungalow on the material date. The applicant himself, under cross-examination, assessed the value of the building at $4,000 while, according to a valuation made in 1947, Mr. Peralta assessed the value at $6,000. Immediately before the Reference came before the Court Mr. Peralta made another valuation. This time he calculated the value of the component of the bungalow after demolition or rather dismantlement. By this method he arrived at a total valuation of $3,665 but admitted that he had not deducted the cost of the labour to be employed in dismantling the bungalow. In fairness to Mr. Sault I must explain that he maintained that the market value of the bungalow should be assessed on its value as a dwelling and he only made use of Mr. Peralta's demolition value to prove that the sum of $300 awarded by the Collector was demonstrably inadequate. The Collector did not take this valuation himself but accepted that figure as the demolition value of the bungalow as assessed by the Settlement Engineer.

Before concerning myself with the details of this valuation I must mention one important matter. For some time before the material date, the duration of which I do not know, the bungalow had been leased to Government. The applicant maintained that one of the conditions of the lease was that Government should be responsible for the repairs. This matter however is clearly outside the scope of this Reference. This Court is only concerned with the assessment of the market value of the bungalow in the state it was on the 23rd June, 1949. If the applicant is correct in his statement regarding the covenant to repair that must be the subject matter of a separate claim.

There was a difference of opinion regarding the method of valuation which should properly be employed. On behalf of the applicant it was urged that its value as a dwelling was the test while Federal Counsel submitted that only the "demolition value" should be awarded.

I inspected the bungalow on the 13th January, 1950, which was nearly seven months after the material date. It was in an advanced state of dilapidation. In several of the rooms there were yawning gaps in the floors: there were many holes in the roof: in many places the wall boards had completely perished and the servants quarters and the kitchen were quite obviously unfit for habitation or use. In view of the evidence of the Settlement Engineer I am satisfied that the greater part of the dilapidation had been in existence for much more than seven months. The Settlement Engineer testified that he inspected the bungalow in 1947 and again in 1949. At the latter inspection, which was made for the specific purpose of re-valuing the bungalow, he reached the conclusion that "the building was derelict and rehabilitation economically impossible". He added that "I would not have the slightest hesitation in condemning the bungalow as unfit for human habitation".

As against this expression of opinion the applicant considered that the bungalow could be repaired at a

cost of between $5,000 and $6,000. Mr. Peralta also was of opinion that economic repairs were possible at a cost of about $5,000. In view of the conflict of opinions I have to rely on the view I formed as a result of personal inspection. I am satisfied that in order to effect adequate repairs the bungalow would have to be dismantled down to the brick pillars on which it rests. I accept the Settlement Engineer's evidence in this matter therefore and consequently have to compute the market value of the various component parts stacked on the site and after deducting the costs of dismantling.

When the Settlement Engineer inspected the bungalow in September, 1947, he formed the opinion that 70% of the woodwork was useless owing to dry rot or the ravages of white ants. I may interpolate here that the bungalow is constructed throughout of wood except that it stands on brick pillars and the two flights of entrance steps are made of concrete. He therefore valued the whole structure as firewood and decided that $300 was the fair market value. He admitted however that he included no amount in his valuation for the tiles on the roof. Mr. Peralta made a detailed valuation of the component parts of the bungalow as follows :—

Heavy bearer beams and roof trusses ...	$2,750
External doors and frames	$ 120
Internal doors and frames	$ 55
Walls and floors (as firewood)	$ 40
Louvers from porch-verandah	$ 200
40,000 tiles from roof	$ 500
	$3,665

Mr. Peralta made no deduction for the cost of dismantling; he apparently made no allowance for damage to material caused in the process of dismantling and he assumed that there would be a ready second-hand market for the whole of the material. He said that all except two of the bearer beams were in good order but the Settlement Engineer denied this and said that the ends of most of those beams were affected by dry rot and consequently before they could be used again at least the ends would have to be sawn off. This would materially reduce their value. It is clear therefore that when using Mr. Peralta's valuation as a basis, which I propose to do, a number of deductions must be made.

I assess the cost of dismantling at $200. With regard to the heavy bearer beams Mr. Peralta computed their weight to be "between 25 and 30 tons" and obtained his valuation by taking the intermediate figure of 27½ tons. When the ends had been removed this weight would be considerably reduced. There is insufficient evidence before me to enable me to compute either the weight of the beams after their ends had been removed or the value consequent upon the reduction in length. For these allowances therefore I adopt the arbitrary deduction of $750. I also deduct $17 in respect of damage when dismantling all doors and frames *i.e.* a fraction under 10%. The floor and walls were valued at $40 by Mr. Peralta as firewood. I am extremely doubtful if any person would wish to use boards which had been drying under cover for over thirty years and some of which (*i.e.* those which formed the walls) were coated with paint as firewood. Their rate of combustion would be extremely high and consequently their value as firewood very small. For these reasons, and in the absence of any evidence to the contrary, I am not satisfied that there would be any market for this item and therefore allow no compensation in respect of it.

Mr. Sault emphasised that the louvers in the front porch were "in first class condition". They appeared to be undamaged but almost inevitably some damage would be sustained when they were dismantled. Also the applicant tendered no evidence to show that there was any likelihood of there being any ready market for this item. For these reasons I assess the value of the louvers at $100.

With regard to the tiles the Settlement Engineer admitted that they were about 32,000 in number: that they were in good condition and were in fact of better quality than the modern Chinese tiles and that, in certain conditions, they could be used again and yet, in valuing the bungalow, he made no allowance in respect of them. From the evidence I am satisfied that there is in fact a market for such second-hand tiles though Government uses another type of tile. The limitation on their use is that as they are larger than the modern tiles they cannot be used to repair an existing roof composed of modern tiles. The Settlement Engineer considered this limitation so material that he came to the conclusion that the tiles were of little value. He admitted however that they can be used to cover a whole roof or any portion of a roof provided they are not mixed with the newer type of tile. Mr. Peralta computed the number of tiles to be "about 40,000". As the Settlement Engineer made his estimate after they had been removed from the roof and stacked on the ground it appears that a great number were damaged in the process of removal and stacking. The Settlement Engineer agreed, providing there was a second-hand market, 1¼ cents per tile would be a fair price. I accept the Settlement Engineer's estimate that 32,000 tiles in good order

survived the dismantlement and were available for sale. At the agreed price of 1¼ cents each this gives a total valuation for the tiles of $400.

My allowances for the demolition value of the bungalow are therefore as follows:—

Heavy timber and roof trusses		$2,000
All doors and frames		$ 158
Louvers from verandah		$ 100
Tiles		$ 400
		$2,658
Less cost of dismantling		$ 200
		$2,458

Thus I arrive at a final valuation in respect of the land and bungalow of $4,158. This contrasts with an offer of $5,000 made for the whole property by Captain Mohamed Ali in December, 1947. This offer however was made on behalf of a client who was about to retire and who required a house near Malacca. This offer therefore was from one who was willing to pay a higher price to secure a house in a particular neighbourhood. In January, 1948, Haji Ahmad Khan made an offer to the applicant of $4,500 for the same property. But again he admitted that he had a special reason for desiring that particular property. He is a diamond merchant and in these troubled times was very anxious for security reasons to secure a residence near a Police Station. His offer therefore was likely to be considerably above the ordinary market value then prevailing. If due allowance be made for the special reasons behind these two offers, and bearing in mind that they were made not less than eighteen months before the material date, they are not in violent conflict with the valuation at which I have arrived

The applicant has succeeded in this Reference and, had the proceedings been an Appeal and not a Reference under the Land Acquisition Ordinance, I should have awarded him his costs. As his claim was for $8,000 however I am precluded by the provisions of paragraph (a) of sub-section (1) of section 33 of the Land Acquisition Ordinance from awarding him costs. There will therefore be no order as to costs.

Order accordingly.